

Insights and Commentary from Dentons

The combination of Dentons and Kensington Swan offers our clients access to 10,000+ lawyers in 182 locations and 74 countries around the world.

This document was authored by representatives of Kensington Swan prior to our combination's launch and continues to be offered to provide clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

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Philanthropy White Paper

A collaboration between Kensington Swan and Auckland Foundation

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“To give money is an easy matter. But to decide to whom to give it, and how large, when and for what purpose and how, is neither in everyone’s power nor an easy matter.”
Aristotle

In this paper, Liam Willis, Partnership Director of Auckland Foundation, Henry Brandts-Giesen and Jane Khoo of Kensington Swan, discuss the charitable sector in New Zealand and in a global context, together with some emerging themes and ideas for consideration.

The New Zealand context

Charities have an essential function in our communities, delivering a range of social services that would be difficult to provide on a purely commercial or a state-run basis.

In New Zealand, charities are most commonly structured in one of four ways:

- As an incorporated society, under the Incorporated Societies Act 1908;
- As a charitable trust, under the Charitable Trusts Act 1957;
- Under their own legislation or legal authority; and
- As an unincorporated society, club or group,

provided that they meet the criteria of ‘charitable purpose’ as defined in the Charities Act 2005.

Groups that perform charitable work can derive significant benefits from being registered as a charity. The most notable of these is an exemption from tax on income earned by the charity and a deduction for donors from the assessable amount of their taxable income equal to the value of any donations made.

Over the past decade the New Zealand Government has increased the level of regulation of charities by:

- creating a register of charitable entities;
- appointing a regulator outside of Government (known as Charities Services);
- imposing financial reporting requirements on all registered charities;
- stipulating strict tax implications for groups that lose charitable status; and
- committing to regulatory reviews.

The data available suggests that a significant number of individuals and organisations are engaged in the charities sector in New Zealand. With one charitable organisation for every 170 people, the number of charities in New Zealand has grown significantly in recent years.¹ The ratio is substantially lower than that of Australia, Canada, United Kingdom and the United States.²

¹ John McLeod, The New Zealand Cause Report – Shape of the Charity Sector (March 2017) JBWere <<http://ourauckland.aucklandcouncil.govt.nz/articles/news/2017/11/45-per-cent-average-increase-for-auckland-properties>>.

² McLeod, above n 1, at 10. Although comparisons with philanthropy in the United States are not particularly relevant, for the purposes of this discussion, due to the absence of an equivalent to the New Zealand welfare system.

It is therefore unfortunate that this rate of growth has the potential to create burden on some stakeholders and supporters of the charitable sector. Whilst many new charities meet specific needs and serve a valid purpose, some new entities are being established in circumstances where existing organisations already serve a particular cause and therefore outcomes are being compromised. There is almost certainly significant duplication and a lack of shared knowledge and collaboration in the sector. Oftentimes, it is the lack of experience in governance and administration within some charities that leaves much to be desired.

It goes without saying that there are also finite resources available to the charitable sector. Statistics show a decrease in the operating margins of organisations delivering on important causes, which is largely due to the high numbers of competing charities and the allocation and apportionment of resources between them.³ This begs questions as to how effective and efficient is the charitable sector in delivering the value it seeks to add to the society.

Corporate funding of the charitable sector is quite low, in comparison with other countries and other sources of funding in New Zealand. A significant amount of funding in New Zealand comes from statutory trusts including the energy, gaming and lottery sectors.⁴ However, most funding comes from a large number of people giving smaller amounts. This is also true in Australia and the USA.⁵

Emerging themes

Across the Tasman, the Australian Charities and Not-for-profits Commission (ACNC) provides a good checklist for people thinking of starting a new charity.⁶ The state of Western Australia requires that a prospective new charity prove that the need it purports to serve is not already being met. It is arguable that these rules have controlled the growth of the charitable sector in Australia to a sustainable rate and that there are lessons for New Zealand in this approach.

The greatest inter-generational transfer of wealth in human history is currently underway as the Baby

Boomers are passing away or retiring and transferring their wealth to the next generation. Many New Zealand families have enjoyed unprecedented inflation fueled growth of their net worth to the point where there are often surplus funds available for the fulfillment of philanthropic objectives. Individuals and families seem increasingly more likely than ever before to apply their human, social, and financial capital to benevolent causes. This is timely when social welfare systems are under increasing pressure.

According to Giving New Zealand in its 2014 survey on philanthropic funding in New Zealand, 55% of all giving in New Zealand is by individuals.⁷ Most personal giving is in the form of donations and bequests. It has been suggested that the large proportion of amount bequeathed is due to a combination of an increase in the average value of modern day bequests (this will in a large part be driven by asset inflation) and a larger proportion of charities receiving bequests. For example, 5.2% of charities received bequests in 2011, compared to 6.5% in 2014.⁸ It is expected that the figures have been growing in the past few years.

It has also been suggested that the increase in the number of charities receiving bequests is often due to charities actively marketing personal bequests as a form of charitable giving. For example, many charities now carry out campaigns to actively encourage people to leave a bequest or legacy in their will.⁹ Well intended people are increasingly channeling their charitable giving through these organisations, sometimes without any due diligence having been carried out on the recipient charities or scrutiny as to how they apply the funds.

The ratio of charitable organisations to the New Zealand population is extremely high by international standards. Despite reasonably strong funding levels, the sector is very fragmented and does not seem to properly streamline its efforts to maximize efficiencies. Divergence and duplication of efforts by different organisations, despite working for the same causes, may very well be inhibiting the actual social impact of the charitable sector.

³ Anuja Nadkarni 'NZ's expanding \$60b not-for-profit sector may be set to shrink' Stuff (14 March 2017).

⁴ McLeod, above n 1, at 13.

⁵ McLeod, above n 1, at 16.

⁶ Australian Charities and Not-for-profits Commission 'Checklist: Before you start a charity' Australian Government <http://www.acnc.gov.au/ACNC/Reg/Start_charity.aspx>

⁷ Business and Economic Research Limited, Giving New Zealand – Philanthropic Funding 2014 (2015) Philanthropy New Zealand <<https://philanthropy.org.nz/wp-content/uploads/2016/03/Giving-New-Zealand-2014-1.pdf>>.

⁸ At 12.

⁹ At 12.

There is therefore an increasing importance and pressure for the charitable sector in New Zealand to demonstrate that tangible impact is being created. This may require a rethink of traditional philanthropic models.

Community foundations

Collaborations and mergers of philanthropic efforts could be part of the solution. Community foundations are a 100-year-old worldwide movement and the fastest growing form of philanthropy globally. Currently there are over 1,800 community foundations around the world and they provide choice and flexibility for big donors like Facebook's Mark Zuckerberg, through to ordinary, socially conscious New Zealanders and everyone in between.

Community foundations are grant making public charities that are dedicated to improving the lives of those in their local communities. They help to make giving strategic and long lasting. They pool together the financial resources of individuals, families, and businesses to support effective charities.

The popularity of community foundations is due to their simplicity and commitment to a donor's wishes. They take care of compliance and administrative matters, investment and governance. Donors can be as involved as they want to be, with many delighting in focusing on giving and the benefits their gift will bring rather than the often unwanted details of governance and administration matters.

Community foundations typically have very close connections with and empathy for local issues and are in a unique position to facilitate effective giving. They play a key role in identifying and solving the problems in a particular community, creating confidence in the charitable sector that funds are being used effectively and efforts are being streamlined. As a not for profit entity itself, a community foundation is built around a lean, transparent and cost recovery model so as to maximise the impact of every dollar given.

Review of the Charities Act 2005

The Minister for the Community and Voluntary Sector, Peeni Henare, announced a comprehensive review of the Charities Act 2005 on 24 May 2018. The Minister recognises that the significant changes in the charitable

sector and recent trends warrant a review to ensure that the Charities Act is still effective and 'fit for purpose'.¹⁰ The comprehensive legislative review will focus on substantive issues, and amongst others include the extent to which charities are able to advocate for their causes in the current landscape. Public consultation for the Charities Act review will take place over March and April 2019, and input from the sector, its stakeholders and the general public has been identified as crucial to the review.

The review into the Charities Act is timely and there is optimism that the broad scope of the review will facilitate robust discussions on many of the key issues identified in this paper.

Role of the advisor

The role of Professional Advisors in this process should not be overlooked. It is critical that individuals looking to engage in philanthropy receive sound, expert advice on how to do so strategically. With the assistance of organisations like local community foundations, advisors are perfectly placed to help ensure the sector works towards the efficiency necessary to ensure sustainability.

Studies from Canada¹¹ indicate that 76% of clients agree that discussing philanthropy with their advisor strengthens the relationship. 2013 American research¹² has also revealed that engaging in philanthropic conversations with clients would likely improve the client-advisor relationship and strengthen future business opportunities. In particular, high net worth individuals have shown that they:

- appreciate and value the advice of their Professional Advisors in helping them recognise and reach their philanthropic aspirations;
- prefer to discuss their values and passions regarding giving, rather than the technical aspects and tax advantages; and
- would like to have a philanthropic conversation *in the beginning stages* of their relationship with their Professional Advisor.

A 2016 UK study¹³ found that the estate planning process can reliably shape whether people leave assets to charity in their will. Further, if the conversation of giving is *normalised* as something other people do, it is an easier conversation to have and opens up opportunities.

¹⁰ The New Zealand Government 'Ensuring a fit for purpose Charities Act' (press release, 24 May 2018)

¹¹ 2014 sector collaborative study for Philanthropic Foundations of Canada conducted by Ipsos Canada

¹² 2013 US Trust and Philanthropic Initiative

¹³ Legacy Giving and Behavioural Insights Report 2016 – a collaborative project by the Behavioural Insights Team, through the University of Bristol

A 2015 QUT Survey¹⁴ also highlighted the Professional Advisor's important role as a conduit for clients to realise their philanthropic pursuits. Despite the various benefits and advantages that have been identified, however, the same survey found that only one third of advisors discuss philanthropic issues with their clients, with fewer than three out of five advisors saying that they had the skills and knowledge to advise clients about philanthropic issues.

Conclusion

Just as many of the great challenges of our time are too big to be tackled in isolation, so too can philanthropic efforts be collectivised for the common good of our communities. There are significant benefits to be gained from the charitable sector moving steadily towards a more collaborative model.

Following the strong growth in size and funding in recent years and with the ever increasing cost of compliance, the charitable sector must position itself towards sustainability and efficiency. The time is now if we are to make the most of the unprecedented wealth we see beginning to change hands from the baby boomers to the next generation. If this can be achieved then tangible benefits to New Zealand society will inevitably follow.

¹⁴ The Australian Centre for Philanthropy and Nonprofit Studies, QUT 'Philanthropy and Philanthropists' Giving Australia 2015 (Australia, September 2016).

